

## EX PARTE OR LATE FILED



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October 24, 1996

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

Re: *Ex Parte* - CC Docket No. 96-149

Dear Mr. Caton:

Both Bell Atlantic<sup>1</sup> and Teleport Communications Group ("TCG")<sup>2</sup> have submitted *ex parte* letters in the above-referenced proceeding concerning reporting requirements to be imposed on BOCs. This letter addresses those issues.

As a threshold matter, Bell Atlantic maintains that the reporting requirements proposed by AT&T "focus" on Section 272(e)(1) of the Act, which, according to Bell Atlantic, is "[t]he only section dealing with nondiscrimination in the timeliness of providing service." Bell Atlantic is mistaken.

AT&T has proposed<sup>3</sup> a narrow set of reporting requirements designed to assist the Commission and industry in assessing a BOC's compliance with its nondiscrimination obligations under the Communications Act, as amended, including:

Section 272(c)(1) (which prohibits a BOC from "discriminat[ing] between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards");

<sup>1</sup> Letter to William F. Caton, Acting Secretary, FCC, from Gerald Asch, Director - FCC Relations, Bell Atlantic, CC Docket No. 96-149, dated October 16, 1996.

<sup>2</sup> Letter to William F. Caton, Acting Secretary, FCC, from Teresa Marrero, Teleport Communications Group, CC Docket No. 96-149, dated October 8, 1996.

<sup>3</sup> Letter to William F. Caton, Acting Secretary, FCC, from Charles E. Griffin, Government Affairs Regulatory Director, AT&T, CC Docket No. 96-149, dated October 3, 1996.

Section 272(e)(1) (which requires a BOC to “fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates”);

Section 272(e)(2) (which prohibits a BOC from “provid[ing] any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions”);

Section 272(e)(3) (which requires a BOC to “charge” its affiliate or “impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service”); and

Section 272(e)(4) (which permits a BOC to provide “intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions”).

Any discrimination in the development, provision, maintenance, or other offering of exchange access services would violate each of these nondiscrimination obligations.<sup>4</sup>

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<sup>4</sup> For example, the provision to competitors of inferior provisioning intervals would clearly violate Sections 272(c) and 272(e)(1). Such conduct would also violate the Section 272(e)(2) requirement that facilities, services, and information concerning exchange access be made available to the BOC and its competitors on the same terms and conditions. In addition, because inferior provisioning intervals would mean that competitors were receiving an access service inferior to that provided to the BOC affiliate, such inferior provisioning necessarily would violate the requirement that a BOC charge its affiliate an amount for access no less than that charged to any unaffiliated interexchange carrier (sec. 272(e)(3)), and the requirement that intraLATA facilities and services be made available to all carriers at the same rates and on the same terms and conditions (sec. 272(e)(4)).

In all events, Bell Atlantic's contention that the reporting requirements proposed by AT&T are "irrelevant" and "of no use in detecting discrimination" is puzzling. As AT&T previously explained, the requirements that it has proposed concern the most significant of the existing quality measures that -- as Bell Atlantic acknowledges -- AT&T and the LECs currently use to assess the quality of access provided to AT&T. As such, these measures concern those aspects of access provisioning and maintenance that carriers themselves consider important, and that they have developed in the context of existing commercial arrangements.<sup>5</sup>

Moreover, while Bell Atlantic has taken issue with AT&T's proposed tracking of jeopardy notification as an "intermediate measure[],"<sup>6</sup> it cannot reasonably challenge the relevance of the on-time performance, installation and repair intervals, and reliability criteria identified by AT&T. In this regard, TCG's filing clearly confirms the importance of reporting requirements, and the relevance of installation intervals, maintenance intervals, and service availability criteria.

Indeed, while the reporting requirements proposed by AT&T in its October 3, 1996 ex parte submission relate to exchange access services, TCG properly proposes specific reporting requirements to assess a BOC's compliance with its nondiscrimination obligations in connection with exchange services. Those proposals are entirely consistent with the requirements of the Act (e.g., sec. 272(c); sec. 272(e)). They are, moreover, particularly important to the extent that the Commission concludes that the Section 272 separate affiliate could provide local exchange services, and the manner in which that affiliate may provide those services.

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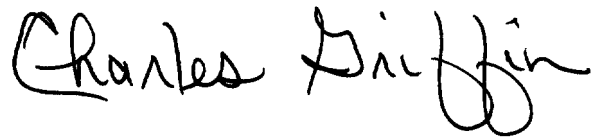
<sup>5</sup> Also meritless is Bell Atlantic's claim that Section 272(e)(1) does not "create additional reporting requirements." As a threshold matter, Section 271 of the Act clearly provides that the Commission "shall not approve" a request for in-region interLATA authority unless "it finds," among other things, that "the requested authorization will be carried out in accordance with the requirements of section 272" (sec. 271(d)(3)). Meaningful reporting requirements are an essential prerequisite to any such finding.

<sup>6</sup> Even assertedly "intermediate checkpoints" relate directly to the nondiscrimination requirements of the Act, are crucial measures of access services quality, and important to interexchange carrier end user customers. Thus, the interval until the BOC provides a firm order confirmation and the percent of cases in which a BOC provides jeopardy notification would be directly relevant to, among other things, a BOC's obligation not to discriminate in "the provision of . . . information . . . or in the establishment of standards" (sec. 272(c)); sec. 272(e)(2)), and directly affect end user satisfaction with the performance of interexchange carriers.

Bell Atlantic's further claim that reporting requirements should, at most, track only aggregate and averaged information is also unavailing. Such measures leave opportunity for provisioning and maintenance to appear comparable on average, while discriminating in particular instances of importance to customers. Accordingly, AT&T has proposed reporting installation and restoration information by percentage achieved within successive time periods. Though Bell Atlantic asserts only that this is "a meaningless statistic," such information would, in fact, provide the Commission and the industry meaningful insight into whether a BOC was manipulating its offerings to achieve improper marketplace advantages despite maintaining nondiscriminatory averages.<sup>7</sup>

Two copies of this Notice are being submitted to the Secretary of the Commission in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles D. Griffin". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

cc: M. M. Carey, FCC  
R. V. Karmarkar, FCC  
C. E. Leanza, FCC  
C. E. Matthey, FCC  
G. Asch, Bell Atlantic  
T. Marrero, TCG

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For example, a BOC could report comparable average provisioning times even if it were, for example, to provide to its affiliate expedited provisioning when important, and slower provisioning when acceptable, and to provide precisely the opposite treatment to its competitors.